IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 624 of 2004.

Date of Decision: 25.4.2007

Meera Devi …Petitioner.

-versus-

Union of India & ors. …Respondents.

Coram:

The Hon'ble Mr. Rajiv Sharma, Judge.

Whether approved for reporting? Yes.

For the Petitioner. : Mr. Rahul Mahajan, Advocate.

For the Respondents :. Mr. Sandeep Sharma, Asstt. Solicitor General of India.

Rajiv Sharma, J. (oral):

This petition is directed against the letter dated 31.10.2002, i.e. Annexure-P4. The brief facts for the adjudication of this petition are that the petitioner's husband died on 4.8.1998. The petitioner wrote a letter to the respondents on 23.4.1999 seeking compassionate appointment. The petitioner was apprised by way of letter dated 5.12.2000 that her case for compassionate appointment against the deceased quota for the post of Mazdoor-Chowkidar has been considered by the Board of Officers and she will be given appointment as per availability of vacancy for the post of Mazdoor-Chowkidar. It is evident from letter dated 5.12.2000 that the Board of Officers has fixed the seniority of the petitioner 0.01. In sequel to Annexure-P1, the petitioner wrote a letter to the Chief Engineer (Headquarters) Western

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**Whether the reporters of the Local Newspapers may be allowed to see the Judgment?*

Command, requesting for early appointment on compassionate grounds. But ultimately the case of the petitioner was rejected on 31-10-2002 vide Annexure-P4.

Mr. Rahul Mahajan appearing on behalf of the petitioner submits that her case has been rejected vide Annexure-P4 without due application of mind. Mr. Mahajan further submits that the petitioner has only been released about Rs.69,391/- towards the terminal benefits after the death of her husband and she has to maintain two minor sons and one daughter.

Mr. Sandeep Sharma learned Assistant Solicitor General of India submits that the case of the petitioner has been considered as per the latest instructions applicable to the respondents.

I have perused the record and heard the parties.

It is evident from the contents of Annexure-P4 that the same has been decided in a very slip shod manner. The petitioner has never sought employment for her son, but in para-5, there are averments as if the petitioner's son was also seeking employment on compassionate basis. Though this has been tried to be explained by issuing subsequent corrigendum on 16.11.2002. The explanation has been issued only to cover up the lapse in earlier communication dated 31.10.2002. What could be gathered from the material placed on record is that the petitioner has been paid only about Rs.69,391/- towards terminal benefits. There is no explanation how a figure of Rs.15000/- per annum income available to the petitioner has been arrived at. There should have been some explanation where from the petitioner is getting income of Rs.15000/- per annum. The Hon'ble Supreme Court in case titled as ***Govind Prakash Verma versus Life Insurance Corporation of India and others, (2005)10 SCC 289,*** has held that the terminal benefits are not to be taken into consideration while considering the case for compassionate appointment. Their Lordships of Hon'ble Supreme Court have opined :-

" In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee."

The upshot of the above discussion is that Annexure-P4 dated 31.10.2004 is outcome of closed mind. The Competent Authority has not applied his mind while rejecting the case of the petitioner in a judicious manner. The averment with regard to the petitioner's son seeking appointment on compassionate basis in the order dated 31.10.2002 definitely suggests that the same has been issued in a mechanical manner. The petitioner has been apprised vide Annexure-P1 that her name was at Sr. No.1 as approved by the Board of Officers and she was likely to be offered appointment. There is no explanation why the petitioner has not been offered appointment pursuant to Annexure-P1 to the post of Mazdoor-Chowkidar.

A close scrutiny of the letter dated 31.10.2002 reveals that the case of the petitioner was rejected on the ground that there were more deserving cases and only few vacancies were available. The details of other deserving cases have not been given in letter dated 31.10.2002. The details of the vacancies are also not given. The case of the petitioner who has to look after two minor sons and a daughter and has only been paid a sum of Rs.69,391/- towards the retiral benefits of her late husband was more deserving.

The case of the petitioner was definitely recommended by the Board of Officers, as mentioned in Annexure-P1, but in the letter date 31.10.2002, it is mentioned that her case was not recommended by the Board of Officers for appointment on compassionate grounds.

Accordingly, writ petition is allowed and Annexure-P4, dated 31.10.2002 is quashed and set aside. The respondents are directed to consider the case of the petitioner afresh wholly uninfluenced by earlier decision dated 31.10.2002. The respondents are directed to take into consideration the law laid down by the Hon'ble Supreme Court in the above cited case. The decision be taken by the respondents within a period of eight weeks from the receipt of the certified copy of the judgment.

April 25,2007. **(Rajiv Sharma)**
Gandhi **Judge**